

Message Text

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PAGE 01 STATE 140422
ORIGIN COME-00

INFO OCT-01 EUR-12 NEA-11 ISO-00 EB-08 L-03 STR-07
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DRAFTED BY COM/BED/CAGNE/JBHEARN:DJW
APPROVED BY EB/OCA/CD:WERAU
COM/BED/CAGNE/PBHALE
COM/DAS/TR/SMARCUSS
COM/DAGC/ITA/KNKNOWLES
STATE/NEA/RA/DTMORRISON
EUR/WE: VB SUBS)
L/NEA:MPEAY
EB/B TSCHLENKER:
NEA/AFN:ABERGSTROM

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R 022214Z JUN 78
FM SECSTATE WASHDC
TO AMEMBASSY ROME
INFO AMEMBASSY TRIPOLI

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E.O. 11652:N/A

TAGS: BEXP, IT

SUBJECT: ARAB BOYCOTT: STEEL FOR LIBYA

REF: ROME 6911

1. AMENDED POLICY STATEMENT IN EXPORT ADMINISTRATION
AMENDMENTS OF 1977 (EAA) DECLARES IT TO BE U.S. POLICY TO:
(1) OPPOSE FOREIGN BOYCOTTS OF FRIENDLY COUNTRIES; AND (2)
TO ENCOURAGE, AND IN SPECIFIED CASES, TO PROHIBIT U.S.
CONCERNS FROM TAKING ANY ACTIONS TO FURTHER OR SUPPORT SUCH
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PAGE 02 STATE 140422

BOYCOTTS. THUS, U.S. FIRMS ENCOURAGED AS MATTER OF POLICY
NOT TO TAKE ACTIONS TO COMPLY WITH BOYCOTT REQUIREMENTS
EVEN OF TYPES WHICH LEGALLY PERMISSIBLE. REASON FOR
ARMCO'S POSITION NOT APPARENT, BUT IT MAY REFLECT COMPANY
POLICY DECISION NOT TO COMPLY WITH ANY BOYCOTT CONDITIONS.
IN ANY EVENT, SINCE POSITION BEING TAKEN BY ARMCO IS FULLY
CONSISTENT WITH U.S. POLICY CITED ABOVE, COMMERCE CANNOT

ENCOURAGE COMPANY TO RECONSIDER ITS POSITION. THIS IS MATTER WHICH MUST BE WORKED OUT BETWEEN PARTNERS OF ARMCO FINSIDER.

2. IF ARMCO REFUSAL TO PROVIDE NEGATIVE CERTIFICATE OF ORIGIN IS NOT RESULT OF POLICY DECISION BUT CONCERN ABOUT LEGALITY UNDER COMMERCE REGULATIONS IMPLEMENTING EAA, THEN

FIRST STEP FOR ITALIAN FIRM SHOULD BE TO DETERMINE WHETHER ACTIVITY IN QUESTION IS COVERED BY PROHIBITIONS IN THE REGULATIONS. FOR PROHIBITIONS TO APPLY TO ACTIVITY SUCH AS ARMCO FINSIDER SALE TO LIBYA, TWO CONDITIONS MUST BE PRESENT. FIRST, ACTIVITY MUST BE ENGAGED IN BY A U.S. PERSON. DEFINITION OF U.S. PERSON IN SECTION 369.1(B) AND (C) OF REGULATIONS (SEE EXPORT ADMINISTRATION BULLETIN NO. 174 DATED JANUARY 30, 1978) INCLUDES FOREIGN SUBSIDIARIES OR AFFILIATES OF U.S. DOMESTIC CONCERNS WHICH ARE "CONTROLLED IN FACT" BY SUCH DOMESTIC CONCERN. WHILE SITUATION REPORTED PARA 3 REFTEL GIVES APPEARANCE OF ITALIAN CONTROL, QUESTION OF WHERE CONTROL ACTUALLY RESIDES, PER SECTION 369.1(C), DEPENDS ON ALL CIRCUMSTANCES INVOLVED (SEE EXAMPLES 6 AND 7 (ROMAN) UNDER THIS SECTION). SUGGEST FIRM'S LEGAL COUNSEL SHOULD ATTEMPT APPLY THIS SECTION OF REGULATIONS TO FIRM'S PARTICULAR CIRCUMSTANCES.

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PAGE 03 STATE 140422

3. SECONDLY, PROHIBITIONS APPLY ONLY WITH RESPECT TO U.S. PERSON'S ACTIVITY IN INTERSTATE OR FOREIGN COMMERCE OF THE U.S. FIRM'S COUNSEL SHOULD DETERMINE FROM ALL CIRCUMSTANCES OF TRANSACTION WHETHER OR NOT ACTIVITY IN QUESTION IS IN U.S. COMMERCE AS DEFINED SECTION 369.1 (D).

4. EVEN IF CIRCUMSTANCES SUCH THAT SUBJECT TRANSACTION IS COVERED BY PROHIBITIONS, THERE IS EXCEPTION FOR IMPORT AND SHIPPING DOCUMENT REQUIREMENTS OF BOYCOTTING COUNTRY (SECTION 369.3(B)) WHICH PERMITS EXECUTION OF NEGATIVE CERTIFICATES OF ORIGIN UNTIL JUNE 21, 1978. AFTER THAT DATE, CERTIFICATIONS MAY BE IN POSITIVE TERMS ONLY.

5. EMBASSY MAY NOTE THAT ABOVE GUIDANCE PROVIDED BY USDOC APPLIES ONLY TO EAA REGULATIONS AND NOT TO TREASURY'S TAX REFORM ACT ANTI-BOYCOTT REGULATIONS WHICH IN SOME ESPECTS DIFFER DIGNIFICANTLY FROMTHE EAA EGULATIONS.

6. BEGIN LOU. IT IS OUR UNDERSTANDING THAT GOVT OF LIBYA HAS MADE A NUMBER OF NATIONAL INTEREST EXCEPTIONS WAIVING BOYCOTT DOCUMENTATION REQUIREMENTS. ALSO, WHERE LETTER OF CREDIT CONDITIONS HAVE PROVED TROUBLESOME IN OTHER BOY-

COTTING COUNTRIES, SOME FIRMS HAVE TURNED TO ALTERNATIVE METHODS OF PAYMENT TO AVOID CONFLICT BETWEEN U.S. REGULATIONS/POLICY AND BOYCOTTING COUNTRY LETTER OF CREDIT REQUIREMENTS. END LOU.

7. REGRET LENGTH OF TIME REQUIRED TO PROVIDE RESPONSE TO REFTEL. WE WOULD WELCOME FURTHER REPORTING ON WHETHER/HOW ISSUE IS RESOLVED. CHRISTOPHER

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